

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFERES - CORPORATION TAX BUREAU

In the Matter of the Application of

STERLING PRECISION CORPORATION

for revision or refund of franchise
tax under Article 9-A of the Tax Law
for the fiscal year ended April 30,
1963.

Hearing Case No. 5702

The tax for the fiscal year ended April 30, 1963 was recomputed on
November 12, 1965, as follows:

Entire Net Income	\$437,329.91
Business allocation %	75,2579
New York Base	329,125.31
Tax at 5½%	18,101.89
Subsidiary Capital Tax	2,914.00
Total Tax	\$ 21,015.89

The above assessment was based on a field audit examination conducted
by our New York office. The only adjustment in dispute is disallowance
of a net operating loss deduction claimed on the return.

Timely application for revision or refund was filed on January 18, 1966.

Taxpayer claims it is entitled to a net operating loss deduction of
\$169,772.03 representing the consolidated net operating loss carried forward
from the consolidated Federal return for the fiscal year ended April 30,
1962 to the Consolidated Federal return for the fiscal year ended April 30,
1963. It also contends that the Tax Commission net operating loss ruling
of July 21, 1965 should not be applied retroactively.

Informal hearing was held in New York City on June 15, 1966 before John
J. Genevich. The taxpayer was represented by Francis O'Riordan, Controller,
and J. J. Gobris, Manager of Taxation and Finance Procedures.

The information on file discloses that Sterling Precision Corporation
filed consolidated returns with the U. S. Treasury Department and individual
returns with us. The corporation carried forward consolidated net oper-
ating loss of \$169,772.03 from the fiscal year ended April 30, 1962 to the
fiscal year ended April 30, 1963 for Federal purposes.

If the file had not been in our New York office for field audit, Albany
desk audit of the fiscal year ended April 30, 1963 return would have been
completed before issuance of the Consolidated Net Operating Loss Ruling of
the Tax Commission dated July 21, 1965 and we would have permitted a
deduction of \$105,767.96 (representing Sterling Precision Corporation loss
of \$1,413,375.14 divided by total losses of \$2,268,481.39 times consoli-
dated net operating loss deduction of \$169,772.03).

Under the ruling of July 21, 1965, we treat the taxpayer as if it filed
individual Federal returns. Under such treatment the loss for the fiscal
year ended April 30, 1958 (a non-allowable loss for State purposes) would
have been carried forward for Federal purposes, so the taxpayer would not
be entitled to any deduction.

We believe there is merit in the taxpayer's contention that the ruling of July 21, 1965 should not be applied retroactively to their detriment. The taxpayer should not be penalized because a timely audit of the return was not made, which would have resulted in allowance of a deduction of \$105,767.96 as computed above. The Board recommends that such deduction be permitted to accord the taxpayer the same treatment as extended to other taxpayers in similar situations.

The corrected assessment would be computed as follows:

Entire Net Income reported	\$437,329.91
Less Net Operating Loss Deduction	105,767.96
Corrected Entire Net Income	331,561.95
Business Allocation %	75.2579
Tax at 5 1/2%	13,723.96
Subsidiary Capital Tax	2,914.00
Total Tax	16,637.96
Previously assessed	21,015.89
Credit	\$ 4,377.93

/s/

W. F. SULLIVAN

Chairman

/s/

D. H. GILHOOLY

Approved
E. A. DORAN

/s/

J. J. GENEVICH

JJC:MB

Approved
JAMES R. MACDUFF
8-10-66

IRA J. PALESTIN
8/15/66